

Court of Appeals, State of Michigan

ORDER

People of MI v Laith Hirmuz

Docket No. 259154

LC No. 2003-192092-FC

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Karen M. Fort Hood
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion to supplement the pending application is GRANTED.

The Court further orders that the January 11, 2005, order of the Oakland County Circuit Court is REVERSED. Regrettably, despite this Court's clear instructions regarding remand in its order of November 30, 2004, the record does not reflect that the circuit court engaged in the requisite constitutional analysis pursuant to *People v Hackett*, 421 Mich 338, 350; 365 NW2d 120 (1984). Neither the transcripts nor the circuit court's opinion and order indicate upon which specific exception to MCL 750.520j the court relied when deciding that defendant's offer of proof was sufficient and that the evidence was admissible. Inexplicably, the circuit court then held a hearing at which the alleged victim was again questioned at length regarding the accusations – despite the fact that the alleged victim had never recanted her previous trial testimony and despite the trial court's own reservations stated on the record about subjecting the alleged victim to renewed questioning given her initial trial testimony. The court's order reflects that the circuit court decided to admit the evidence regarding Romel Nazi because the new medical evidence was "inconsistent" with the alleged victim's testimony, a reason that does not fall within any of the exceptions to MCL 750.520j. Accordingly, the record reflects no basis upon which to admit the evidence under a recognized exception to the statute.

In light of the totality of the circumstances, the case is to be assigned to a different judge upon remand. See *Feaheny v Caldwell*, 175 Mich App 291, 309-310; 437 NW2d 358 (1989). A copy of this order shall be provided to Oakland County Circuit Chief Judge Wendy Potts. The case is REMANDED to the circuit court for further proceedings consistent with this order.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 14 2005

Date

Sandra Schultz Mengel
Chief Clerk